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PATENT
M/S PETITIONS

Attorney Docket No.: 40770-000156/US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.: 09/720,380
Filing Date: December 20, 2000
Applicant: Hassan JOMAA
Group Art Unit: 1616
Examiner: S. Clardy
Title: COMBINED PREPARATION OF ANTI-INFECTIONOUSLY
ACTIVE COMPOUNDS WHICH INHIBIT THE
2-C-METHYLERYTHROSE-4 METABOLIC PATHWAY,
AND INHIBITORS OF LIPID METABOLISM
Attorney Docket: 40770-000156/US

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OFFICE OF PETITIONS

November 14, 2003

M/S Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PETITION TO REVIVE PATENT APPLICATION
UNDER 37 C.F.R. §1.137(b)

Sir:

Pursuant to the provisions of 37 C.F.R. § 1.137(b), BioAgency AG ("Petitioner") hereby petitions to revive the above-identified application which was abandoned for failure to respond to the Office Action dated September 9, 2002. As set forth below, the failure to respond to the outstanding Office Action was unintentional.

A response to the outstanding Office Action as required by 37 C.F.R. § 1.137(b)(1), as well as a petition for an extension of time, is attached hereto.

The required petition fee of \$665.00 (small entity) is enclosed herewith by check.

The pertinent facts are as follows:

1. On or about December 4, 2002, the rights to the present application were assigned from the inventor, Hassan Jomaa, to the Petitioner, BioAgency AG.
2. On or about December 13, 2002, the original foreign counsel, Reichel & Reichel, without the knowledge or consent of the Petitioner, instructed the U.S. prosecuting attorney at Haynes & Boone, L.L.P., that no response should be filed in response to the pending Office Action of September 9, 2002.
3. Subsequent to December 4, 2002, Petitioner transferred responsibility for this application from Reichel & Reichel to their current European counsel, Dreiss, Fuhlendorf, Steimle & Becker. In turn, Dreiss, Fuhlendorf, Steimle & Becker requested that responsibility for U.S. prosecution of this application be transferred to from Haynes & Boone, L.L.P., to present U.S. counsel, Harness, Dickey & Pierce, P.L.C.
4. On or about March 24, 2003, Examiner Clardy contacted Gloria Norberg of Haynes & Boone, L.L.P., regarding the failure to respond in a timely manner to the pending Office Action. Ms. Norberg, without the knowledge or consent of the Petitioner, advised Examiner Clardy that the application was to be abandoned. A Notice Of Abandonment dated March 26, 2003, was then prepared and forwarded to Haynes & Boone L.L.P., by Examiner Clardy.
5. Subsequent to April 2, 2003, the file relating to the present application, marked as abandoned by previous U.S. counsel was received in the offices of current U.S. counsel, noted as abandoned and filed with no further action taken.
6. In reviewing the status of the transferred files, the Petitioner became aware of the abandoned status of this application and subsequently advised Harness, Dickey & Pierce,

P.L.C., that the noted abandonment occurred without the knowledge, consent or instruction of the Petitioner and requested that the present petition be filed to revive the application.

For the reasons given above, it is respectfully submitted that the failure to respond to the Office Action dated September 9, 2002, was wholly unintentional on the part of the Petitioner and their current U.S. counsel. Further, it is respectfully submitted that both the original instructions to abandon the application and the confirmation of that abandonment were made by persons without the knowledge of or instructions from the Petitioner. It is therefore respectfully requested that the response and fee be accepted for U.S. Patent Application No. 09/720,380 and that prosecution be reopened.

You are invited to contact the undersigned counsel for further information that may be required.

Respectfully submitted,

HARNESS, DICKEY, & PIERCE, P.L.C.

By 
Gregory P. Brummett, Reg. No. 41,646

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